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August 26, 2008

VIA Electronic Filing

Honorable John G. Koeltl.  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St., Room 1030  
New York, New York 10007

Re: KPN B.V. v. Corcyra D.O.O. et.al., No. 08 CV 1549  
Response to Supplemental Letter Brief from Plaintiff re: Service

Dear Judge Koeltl:

This office represents Defendants, Corcyra D.O.O. ("Corcyra") and Moshe Har Adir ("Adir") who each have made a special appearance to contest service of the Summons and Complaint in this case. This letter brief is a further such special appearance and will respond to the letter brief filed by Plaintiff on or about August 19, 2008 ("Plaintiff's Letter Brief").

It should be noted that, Plaintiff's Letter Brief merely confirms that the Summons and Complaint have not been properly served, as is set out more fully below. Unfortunately, Plaintiff's Letter Brief is somewhat vague with regard to the lack of actual receipt of the Summons and Complaint. This letter should clear up any ambiguity that may exist in this regard.

As set out in the Reply Briefs filed by Corcyra and Adir, Federal Rule of Civil Procedure 4(f)(2)(C)(2) provides for service by registered mail with a return receipt. The requirement of a return receipt means that service is not completed until the return receipt has been signed. The return receipt is intended to establish actual receipt (assuming it is signed by the proper party) and the date of service. Without the receipt there is no way to establish service by registered mail.

Plaintiff's Letter Brief confirms that the Summons and Complaint were not properly served or even actually received by Corcyra and Adir and that the return receipts were never executed. Paragraph 2 of the Supplemental Declaration Regarding Service by Registered Mail ("Supplemental Declaration") that was attached to Plaintiff's Letter Brief simply confirms that the Summons and Complaint was placed in the mail in New York City. Paragraph 3 of the Supplemental Declaration confirms that the envelopes containing the Summons and Complaint were returned to Plaintiff's attorney unopened. As one would expect, signed "return receipts" were not attached or filed.

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Honorable, John G. Koeltl  
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The copies of the envelopes that are attached to the Supplemental Declaration provide some further information regarding the reasons that the documents were returned. The first envelope (Page 1 of the Exhibits attached to Plaintiff's Letter Brief") has a check in the box that reads "Non reclam" in the stamp in the lower left corner. Presumably, that indicates that the envelope was not claimed. The second envelope (Page 3 of the Exhibits attached to Plaintiff's Letter Brief") has a check in the box that reads "nepoznat" in the stamp found near the center of the envelope. Nepoznat appears to be a Croatian word which can be interpreted to mean "unknown." (See, attached dictionary definition). Presumably, this indicates that the addressee is unknown.

The cases cited by Plaintiff do not apply. Morris v. Elmira Country Club, 752 F.2d 35, (2d Cir. 1984), a case that Plaintiff has cited, is not applicable since the documents had been actually received by the served party who simply refused to acknowledge the receipt. In Lumbard v. Shasta, No. 84 Civ. 0009, 1984 WL 908 (S.D.N.Y. Sept. 21, 1984), the defendants did not dispute receipt of the Summons and Complaint. In Salomon Brothers Inc. v. Huitong Internat'l Trust & Investment Corp., No. 94 Civ. 8559, 1997 WL 324051 (S.D.N.Y. June 13, 1997), the defendant's response had indicated actual receipt of the documents in question. Here, there is no document that indicates "actual receipt."

In the present case, the Supplemental Declaration merely confirms that the Summons and Complaints were returned to Plaintiff's attorneys unopened. As such, Plaintiff has failed to provide effective service under the Federal Rules and the Motions to Quash Service of the Summons and Complaint should be granted.

Respectively Submitted,

LAW OFFICES OF ROBERT M. YASPAN

Joseph G. McCarty



Attachment

(Proof of Service Attached)

nepoznat

Search

CONTACTHELPSETTINGSABOUTHRVATSKI

12345678910111213141516171819202122232425262728293031323334353637383940414243444546474849505152535455565758596061626364656667686970717273747576777879808182838485868788899091929394959697989910010110210310410510610710810911011111211311411511611711811912012112212312412512612712812913013113213313413513613713813914014114214314414514614714814915015115215315415515615715815916016116216316416516616716816917017117217317417517617717817918018118218318418518618718818919019119219319419519619719819920020120220320420520620720820921021121221321421521621721821922022122222322422522622722822923023123223323423523623723823924024124224324424524624724824925025125225325425525625725825926026126226326426526626726826927027127227327427527627727827928028128228328428528628728828929029129229329429529629729829930030130230330430530630730830931031131231331431531631731831932032132232332432532632732832933033133233333433533633733833934034134234334434534634734834935035135235335435535635735835936036136236336436536636736836937037137237337437537637737837938038138238338438538638738838939039139239339439539639739839940040140240340440540640740840941041141241341441541641741841942042142242342442542642742842943043143243343443543643743843944044144244344444544644744844945045145245345445545645745845946046146246346446546646746846947047147247347447547647747847948048148248348448548648748848949049149249349449549649749849950050150250350450550650750850951051151251351451551651751851952052152252352452552652752852953053153253353453553653753853954054154254354454554654754854955055155255355455555655755855956056156256356456556656756856957057157257357457557657757857958058158258358458558658758858959059159259359459559659759859960060160260360460560660760860961061161261361461561661761861962062162262362462562662762862963063163263363463563663763863964064164264364464564664764864965065165265365465565665765865966066166266366466566666766866967067167267367467567667767867968068168268368468568668768868969069169269369469569669769869970070170270370470570670770870971071171271371471571671771871972072172272372472572672772872973073173273373473573673773873974074174274374474574674774874975075175275375475575675775875976076176276376476576676776876977077177277377477577677777877978078178278378478578678778878979079179279379479579679779879980080180280380480580680780880981081181281381481581681781881982082182282382482582682782882983083183283383483583683783883984084184284384484584684784884985085185285385485585685785885986086186286386486586686786886987087187287387487587687787887988088188288388488588688788888989089189289389489589689789889990090190290390490590690790890991091191291391491591691791891992092192292392492592692792892993093193293393493593693793893994094194294394494594694794894995095195295395495595695795895996096196296396496596696796896997097197297397497597697797897998098198298398498598698798898999099199299399499599699799899910001001100210031004100510061007100810091010101110121013101410151016101710181019102010211022102310241025102610271028102910301031103210331034103510361037103810391040104110421043104410451046104710481049105010511052105310541055105610571058105910601061106210631064106510661067106810691070107110721073107410751076107710781079108010811082108310841085108610871088108910901091109210931094109510961097109810991100110111021103110411051106110711081109111011111112111311141115111611171118111911201121112211231124112511261127112811291130113111321133113411351136113711381139114011411142114311441145114611471148114911501151115211531154115511561157115811591160116111621163116411651166116711681169117011711172117311741175117611771178117911801181118211831184118511861187118811891190119111921193119411951196119711981199120012011202120312041205120612071208120912101211121212131214121512161217121812191220122112221223122412251226122712281229123012311232123312341235123612371238123912401241124212431244124512461247124812491250125112521253125412551256125712581259126012611262126312641265126612671268126912701271127212731274127512761277127812791280128112821283128412851286128712881289129012911292129312941295129612971298129913001301130213031304130513061307130813091310131113121313131413151316131713181319132013211322132313241325132613271328132913301331133213331334133513361337133813391340134113421343134413451346134713481349135013511352135313541355135613571358135913601361136213631364136513661367136813691370137113721373137413751376137713781379138013811382138313841385138613871388138913901391139213931394139513961397139813991400140114021403140414051406140714081409141014111412141314141415141614171418141914201421142214231424142514261427142814291430143114321433143414351436143714381439144014411442144314441445144614471448144914501451145214531454145514561457145814591460146114621463146414651466146714681469147014711472147314741475147614771478147914801481148214831484148514861487148814891490149114921493149414951496149714981499150015011502150315041505150615071508150915101511151215131514151515161517151815191520152115221523152415251526152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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county aforesaid; I am over the age of 18 years and not a party to the within entitled action; my business address is: 21700 Oxnard Street, Suite 1750, Woodland Hills, California 91367.

On August 26, 2008, I served the foregoing document described as: **RESPONSE TO SUPPLEMENTAL LETTER BRIEF FROM PLAINTIFF RE: SERVICE** on the interested parties in said action, by email and placing true copies thereof enclosed in sealed envelopes as follows:

Jacob S. Pultman  
ALLEN & OVERY  
1221 Avenue of the Americas  
New York, NY 10020  
Jacob.pultman@allenovery.com

XX BY MAIL: As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. (U.S. District Court, Central District, Local Rule 5(b)(3))

Executed on August 26, 2008, at Woodland Hills, California.



Tatyana K. Menachan